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096 205 284468-6

Return to:
WASHINGTON FEDERAL SAVINGS
COMMERCIAL LOANS-UT Office
505 East 200 South
Salt Lake City UT 84102
Attn: _____

W2012119



[Space Above This Line For Recording Data]

PARCEL I.D. # 020690019

**DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FILING WITH ASSIGNMENT
OF LEASES, RENTS AND ACCOUNTS**

THIS DEED OF TRUST (hereinafter, "Security Instrument") is made on February 11th, 2003
BETWEEN _____
PATRICIA ANN SIMPSON AN UNMARRIED INDIVIDUAL

as Grantor/Trustor (hereinafter "Borrower"), whose address is _____;
4523 IRVING #3, SAN FRANCISCO CA 94122; and
WASHINGTON FEDERAL SAVINGS as Trustee,
and Washington Federal Savings, a United States Corporation, as Beneficiary (hereinafter, "Lender"),
whose address is 505 East 200 South, Salt Lake City, Utah 84102

Borrower hereby irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale according to Utah law, all Borrower's estate, right, title, interest, claim and demand, now owned or hereafter acquired, in and to the following described property in WEBER County, Utah (the "Property", which term shall include all or any part of the Property, any improvements thereon and all the property described in Paragraph 2 of the Covenants hereinafter set forth):

**ALL OF LOTS 16, 17 AND 18, BLOCK 1, ROBINSON'S SUBDIVISION OF OGDEN CITY,
WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.**

02-069-0019

which has the address of 2445 CUSTER AVENUE, OGDEN
[Street] [City]
Utah 84401 ("Property Address");
[Zip Code]

TOGETHER WITH all the tenements, hereditaments and appurtenances, now or hereafter thereunto belonging or in anyway appertaining, lease and other agreements for the use and occupancy pertaining thereto, and the rents, issues and profits thereof and all other property or rights of any kind or nature whatsoever further set forth in the Covenants hereinafter set forth to, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Lender to collect and apply such rents, issues and profits.

Borrower's Initials

This Security Instrument shall constitute a security agreement under the Uniform Commercial Code of Utah between Borrower as debtor and Lender as secured party. Borrower grants a security interest to Lender in any of the Property which is personal property and also grants a security interest in the property described in Paragraph 3 of the Covenants hereinafter contained, now owned or hereafter acquired by Borrower (the Property, as defined above, and the property described in said Paragraph 3 are hereafter collectively referred to as the "Collateral").

THIS SECURITY INSTRUMENT IS FOR THE PURPOSE OF SECURING the following:

- (a) Payment of the sum of TWO HUNDRED NINETY THOUSAND AND NO/100S DOLLARS (\$290,000.00) with interest thereon according to the terms of a promissory note of even date herewith, payable to Lender or order and made by Borrower (the "Note", which term shall include all notes evidencing the indebtedness secured by this Security Instrument including all renewals, modifications or extensions thereof);
- (b) Payment of any further sums advanced or loaned by Lender to Borrower, or any of its successors or assigns, if (1) the Note or other writing evidencing the future advance or loan specifically states that it is secured by this Security Instrument or (2) the advance, including costs and expenses incurred by Lender, is made pursuant to this Security Instrument or any other documents executed by Borrower evidencing, securing, or relating to the Note and/or the Collateral, whether executed prior to, contemporaneously with, or subsequent to this Security Instrument (this Security Instrument, the Note and such other documents, including any construction, land loan or other loan agreement, are hereinafter collectively referred to as the "Loan Documents"), together with interest thereon at the rate set forth in the Note unless otherwise specified in the Loan Documents or agreed to in writing;
- (c) Performance of each agreement, term and condition set forth or incorporated by reference in the Loan Documents, including without limitation the loan agreement and assignment of leases and/or rents of even date herewith, which are incorporated herein by reference, or contained herein.

THE MATURITY DATE OF THESE SECURED OBLIGATIONS, AS CONTAINED IN THE LOAN DOCUMENTS, INCLUDING THE NOTE, IS February 15th, 2019

The parties agree that all provisions of Paragraphs 1 through 69 inclusive of the Covenants hereinafter contained, except such paragraphs as are specifically excluded or modified herein, are hereby incorporated herein by reference and made an integral part of this Security Instrument and the Borrower hereby makes said covenants and agrees to fully perform all of said provisions.

The Property which is the subject of this Security Instrument is not used principally or primarily for agricultural or farming purposes.

The undersigned Borrower requests that a copy of any Notice of Default and of any Notice of Sale hereunder, as required by Utah law for the foreclosure of a deed of trust, be mailed to Borrower at the address hereinbefore set forth.

Borrower agrees to obtain all insurance required from time to time by Lender and as elsewhere provided in the Loan Documents, including flood insurance. If Borrower fails to maintain such insurance satisfactory to the Lender, Lender may make the payment on behalf of the Borrower and any sums expended shall be added to principal and bear interest at the rate provided in the Note.

If the box preceding any of the following statements contains an "X," that statement is a part of this Security Instrument and controls the applicability of the Covenants contained herein. If the box is not so checked, the corresponding statement is not part of this Security Instrument.

- Paragraph 49 of the Covenants (which refers to the existence, if any, of an adjustable rate feature in the Note) is hereby deleted.
- The Note secured hereby evidences a construction loan or land loan, but is not a combination Note. Paragraph 53 of the Covenants is hereby deleted.
- The Note secured hereby is a combination construction loan/permanent loan Note. Refer to Paragraph 53 of the Covenants.
- The Property or a part thereof is a Condominium. Refer to Paragraph 50 of the Covenants.
- A fee owner and a leasehold owner of the Property, or a portion thereof, have executed this Security Instrument. Refer to Paragraph 51 of the Covenants.
- The Property or a part thereof is a leasehold estate. Refer to Paragraph 52 of the Covenants.
- See also Schedule "A" of this Deed of Trust, attached hereto and incorporated herein by this reference.

COVENANTS. The Grantor/Trustor represents, warrants, covenants and agrees as follows:

1. Definitions. As used in this instrument the following terms shall mean:

- (a) "Borrower", where used, shall mean the Grantor/Trustor of this Deed of Trust.
- (b) "Lender" shall mean the Lender of this Deed of Trust.
- (c) "Loan" shall mean the entire obligation secured by this Deed of Trust.
- (d) "Security Instrument" shall mean this Deed of Trust.
- (e) "Collateral" shall mean both the collateral identified in Paragraph 2 hereof, together with the Other Property Collateral identified in Paragraph 3 hereof.
- (f) "Note" shall mean the Note or Notes, if more than one, secured by this Security Instrument.
- (g) "Loan Documents" shall mean all documents evidencing the Loan, including the Note, Security Instrument, Security Agreement, Construction Loan Agreement or Land Loan Agreement, any other written loan agreement, and Lender's loan commitment which has been accepted by Borrower prior to funding of the Loan, and Lender's written loan commitment (if any) which has been accepted by Borrower prior to funding of the Loan.

2. Collateral. The following described estate, property and rights of Borrower are also included as security for the performance of each covenant and agreement of Borrower contained herein and the payment of all sums of money secured hereby:

- (a) All land lying in streets and roads adjoining the Property, and all access rights and easements pertaining to the Property.
- (b) All of the lands, tenements, privileges, reversions, remainders, irrigation and water rights and stock, oil and gas rights, royalties, minerals and mineral rights, hereditaments and appurtenances belonging or in any way pertaining to the Property.
- (c) All buildings, structures, improvements, fixtures and property now or hereafter attached to or used in the operation of the Property including, but not limited to heating and incinerating apparatus and equipment, boilers, engines, motors, dynamos, generating equipment, computers, computer workstations and terminals, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, irrigation equipment, carpeting, underpadding, elevators, escalators, partitions, mantles, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants. All property mentioned in this subsection (c) shall be deemed part of the realty and not severable wholly or in part without material injury to the Property.
- (d) All rents, issues and profits of the Property, all existing and future leases of the Property (including extensions, renewals and subleases) all agreements for use and occupancy of the Property (all such leases and agreements whether written or oral, are hereafter referred to as the "Leases"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, all proceeds payable as a result of a lessee's exercise of an option to purchase the Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Borrower may have against any lessee under the Leases or any occupants of the Property (all of the above are hereafter collectively referred to as the "Rents"). This subsection (d) is subject to the right, power and authority given to the Lender in the Loan Documents (as defined herein) to collect and apply the Rents.
- (e) All of Borrower's rights further to encumber said Property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Borrower hereby (i) representing as a special inducement to Lender to make this Loan that as of the date hereof there are no encumbrances to secure debt junior to this Security Instrument and (ii) covenanting that there are to be none as of the date when this Security Instrument becomes of record, except in either case encumbrances having the prior written approval of Lender, and all Borrower's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Security Instrument.

Borrower's Initials



3. Other Property. The following described estate, property and rights of Borrower are also included as security for the performance of each covenant and agreement of Borrower contained herein and the payment of all sums of money secured hereby:

- (a) All furniture, furnishings, appliances, machinery, vehicles, equipment and all other property of any kind now or hereafter located on the Property, used or intended to be used on the Property wherever actually located, or purchased with the proceeds of the Note (as defined herein), and all rights of Borrower as lessee of any property described in this paragraph 3 and subparagraph 2(c) above.
- (b) All compensation, awards, damages, rights of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, injury or decrease in the value of the Property.
- (c) All returned premiums or other payments on any insurance policies pertaining to the Property and any refunds or rebates of taxes or assessments on the Property.
- (d) All plans, specifications, contracts, agreements and purchase orders pertaining or incidental to the design or construction of any improvements on the Property, Borrower's rights under any payment, performance, or other bond in connection with construction of improvements on the Property, and all construction materials, supplies, and equipment delivered to the Property or intended to be used in connection with the construction of improvements on the Property wherever actually located.
- (e) All contracts and agreements pertaining to or affecting the Property including management, operating and franchise agreements and licenses.
- (f) All commitments or agreements, now or hereafter in existence, which will provide Borrower with proceeds to satisfy the Note and the right to receive the proceeds due under such commitments or agreements including refundable deposits and fees.
- (g) All general intangibles relating primarily to the development or use of the Property, including but not limited to (1) all assignable privately-created or governmentally-created development rights in and to the Property, (2) all assignable rights, as a result of any governmental decision involving the Property, to transfer "development rights" in the Property to other real property, any "density transfer" entitlements, or similar land use entitlement related directly to the Property, and (3) all assignable government permits relating to construction on the Property;
- (h) All rights as declarant (including, but not limited to, any reservation of development rights by declarant) under any declaration of covenants, conditions and restrictions or condominium or planned unit development declaration (or similar instrument, whether recorded or unrecorded) which may now or hereafter encumber or purport to affect use of the Property or the conduct of owners of any of the Property with respect to said use;
- (i) All names under or by which the Property or any of the improvements may at any time be operated or known and all rights to carry on business under any such names or any variant thereof, and all trademarks and good will in any way relating to the Property;
- (j) All water stock relating to the Property, all shares of stock or other evidence of ownership of any part of the Property that is owned by the Borrower in common with others, all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property, and all rights as declarant under any such documents; and
- (k) All reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the construction of any improvements on the Property.
- (l) All additions, accessions, replacements, substitutions, proceeds and products of the property described in this paragraph 3 and of any of the Property which is personal property.

4. Security Agreement.

- (a) **Grant of Security Interest.** With respect to any portion of the Collateral which constitutes personal property or fixtures governed by the Uniform Commercial Code of the state in which the Collateral is located (the "Code"), this Security Instrument shall constitute a security agreement between Borrower as Debtor and Lender as Secured Party, and Borrower hereby grants to Lender a security interest in such portion of the Collateral. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the Code. Borrower shall execute and deliver to Lender all financing statements that may from time to time be required by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof, and all costs and expenses of any searches reasonably required by Lender.
- (b) **Rights of Lender.** Lender may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Lender shall proceed to dispose of such property in accordance with the provisions of the Code, ten (10) days' written notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provision of the Security Instrument in lieu of proceeding under the Code.

- (c) **Change in Borrower's Name.** Borrower shall give advance notice in writing to Lender of any proposed change in Borrower's name, identity, or corporate structure and shall execute and deliver to Lender, prior to or concurrently with the occurrence of any such change, all additional financing statements that Lender may require to establish and maintain the validity and priority of Lender's security interest with respect to any Collateral described or referred to herein.
- (d) **Fixture Filing.** With respect to those items of the Collateral that are or will become fixtures upon the Property and those items, if any, specifically described in Exhibit B (if any), this Security Instrument shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Collateral or Exhibit B property is situated. Information concerning the security interest created by this instrument may be obtained from Lender, as Secured Party, at the address of Lender stated above in this Security Instrument. The mailing address of the Borrower, as debtor, is as stated above in this Security Instrument.

5. Performance of Obligations. Borrower shall promptly and timely pay all sums advanced by Lender and due pursuant to the Loan Documents, and which may hereafter be loaned to Borrower by Lender; and Borrower shall strictly comply with all the terms and conditions of the Loan Documents. In the event that Trustee shall commence appropriate proceedings to exercise its power of sale in accordance with appropriate state law and thereafter the Borrower shall cause the discontinuance of the said proceedings by curing the default(s) giving rise to said proceedings, Borrower promises to pay Lender all costs incurred by the Lender and by the Trustee, including without limitation the cost of evidence of title and a reasonable attorney's and/or trustee's fee, in the course of said proceedings to the date of curing said defaults, and the parties agree that payment thereof by Borrower shall be a condition precedent to the discontinuance of said sale proceedings.

6. Warranty of Title. Borrower warrants good and marketable title to an indefeasible fee simple estate in the Property and good marketable title to the Other Property Collateral identified in Paragraph 3 above (excepting subparagraph "g" thereof), free and clear of liens, encumbrances, easements, assessments, security interest, claims or defects of any kind, except those listed in any exhibit attached to and incorporated by reference herein or in any other "exceptions" schedule of Lender's title insurance policy as approved by Lender in writing (the "Exceptions") and real estate taxes for the current year. The Exceptions and the real estate taxes are not delinquent or in default. Borrower warrants the right to convey the Property to Trustee for the benefit of Lender, and the right to grant a security interest for the benefit of Lender in any of the Collateral. Borrower will warrant and defend title to the Collateral and will defend the validity and priority of the lien of this Security Instrument and the security interest granted herein against any claims or demands.

7. Prohibited Liens. Borrower shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Property except for real estate taxes and assessments not yet due and liens permitted by the Loan Documents or approved by Lender in writing.

8. Payment of Taxes and Other Encumbrances. Borrower shall pay the real estate taxes and any assessments or ground rents at least 7 days prior to delinquency unless otherwise provided for in the reserve account. All other encumbrances, charges and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Security Instrument, shall be paid when due and shall not be in default. On request Borrower shall furnish evidence of payment of these items.

9. Maintenance - No Waste. Borrower shall protect and preserve the Collateral and maintain it in good condition and repair. Borrower shall do all acts and take all precautions which, from the character and use of the Collateral, are reasonable, proper or necessary. Borrower shall not commit or permit any waste of the Collateral.

10. Alterations, Removal and Demolition. Borrower shall not structurally alter, remove or demolish any building or improvement on the Property without Lender's prior written consent. Borrower shall not remove any fixture or other item or property which is part of the Collateral without Lender's prior written consent unless the fixture or item of property is replaced by an article of equal suitability owned by Borrower free and clear of any lien or security interest.

11. Completion, Repair and Restoration. Borrower shall promptly complete or repair and restore in good workmanlike manner any building or improvement on the Property which may be constructed or damaged or destroyed and shall pay all costs incurred therefor. Prior to commencement of any construction Borrower shall submit the plans and specifications for Lender's approval and furnish evidence of sufficient funds to complete the work.

12. Compliance with Laws. Borrower shall comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, conditions, and restrictions.

Borrower's Initials



13. Impairment of Collateral. Borrower shall not, without Lender's prior written consent, change the general nature of the occupancy of the Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the Collateral or Lender's lien or security interest in the Collateral.

14. Inspection of Property. Lender and/or its representative may inspect the Property at reasonable times after reasonable notice. If this Loan is a construction loan or land development loan, the right of Lender to inspect, supervise or approve any plans and specifications, or any construction, materials or other aspects or phases of the project which is the subject hereof, is solely for the purpose of enabling Lender to administer the debts secured hereby and to protect its security therefor, and no such inspection, supervision or approval shall be deemed to be for the benefit of any person or party other than Lender; and no other person or party, including without limitation the Borrower or its successor or successors, shall have any right whatsoever to rely in any respect or to any extent upon any such inspection, supervision or approval by Lender. Prior notice of inspection is acknowledged if the Loan Documents include a construction loan agreement or land loan agreement.

15. Borrower's Defense of Collateral. Borrower shall appear in and defend any action or proceeding which may affect the Collateral or the rights of powers of Lender or Trustee.

16. Lender's Right to Protect Collateral. Lender may commence, appear in, and defend any action or proceeding which may affect the Collateral or the rights or powers of Lender or Trustee. Lender may pay, purchase, contest or compromise any encumbrance, charge or lien not listed as an Exception which in its judgment appears to be prior to or superior to the lien of this Security Instrument. If Borrower fails to make any payment or do any act required under the Loan Documents, Lender, without any obligation to do so, without notice to or demand upon Borrower and without releasing Borrower from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Lender may deem necessary to protect the Collateral. Lender is authorized to enter upon the Property for such purposes. In exercising any of these powers, Lender may incur such expenses, in its absolute discretion, it deems necessary. Lender or Trustee shall be empowered under this paragraph to make advances to incur costs and expenses for inspecting the premises periodically, keeping the premises in good repair and protecting the premises from loss, waste, damage or injury. Lender or Trustee, as the case may be, shall be the sole and conclusive judge of the need for any advances made or expenses incurred under the terms of this paragraph. The amount of any advances made or expenses incurred hereunder shall be added to the indebtedness secured hereby and may be recovered in full, together with interest thereon at the maximum legal rate, by the Lender.

17. Repayment of Lender's Expenditures. Borrower shall pay within 10 days after written notice from Lender all sums expended by Lender and all costs and expenses incurred by Lender in taking any actions pursuant to the Loan Documents, including attorneys' fees, accountants' fees, appraisal and inspection fees, and the costs for title reports. Expenditures by Lender shall bear interest from the date of such advance or expenditure at the rate of four percent (4.0%) per annum above the note rate in effect at that time but not less than twelve percent (12.0%) per annum until paid, shall constitute advances made under this Security Instrument, and shall be secured by and have the same priority as the lien of this Security Instrument. If Borrower fails to pay any such expenditures, costs and expenses and interest thereon, Lender may, at its option, without foreclosing the lien of this Security Instrument, commence an independent action against Borrower for the recovery of the expenditures and/or advance any undischursed loan proceeds to pay the expenditures.

18. Sale or Transfer. If the Property or any part thereof is sold, conveyed, transferred, encumbered, or full possessory rights therein transferred, or if a controlling interest in Borrower (if a corporation, limited liability company or a limited liability partnership), a general partner's interest in Borrower (whether a general partnership or limited partnership) or a majority interest of the total of limited partners' interest in a limited partnership, is sold, conveyed, transferred or encumbered, without the prior written consent of the Lender, then Lender may declare all sums secured by the Security Instrument immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance regardless of whether or not Lender has consented or waived its rights, whether by action or non-action, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more.

19. Insurance.

- (a) Borrower shall maintain insurance on the Property (with premiums prepaid) providing replacement cost coverage and insuring against loss by fire and such other risks covered by extended coverage insurance, flood, and such other perils and risks, including earthquake, loss of rents and business interruption as may be required by the Loan Documents. Borrower shall also maintain comprehensive general public liability insurance. All insurance shall be with companies satisfactory to Lender and in such amounts as required by Lender with lender's loss payable clauses in favor of and in form satisfactory to Lender. At least 30 days prior to the expiration of the term of any insurance policy, Borrower shall furnish Lender with written evidence of renewal or issuance of a satisfactory replacement policy. If requested, Borrower shall deliver copies of all policies to Lender.

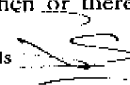
- (b) In the event of foreclosure of this Security Instrument, all interest of Borrower in any insurance policies pertaining to the Collateral and in any claims against the policies and in any proceeds due under the policies shall pass to Lender.
- (c) If under the terms of any Lease (as defined herein), the lessee is required to maintain insurance of the type required by the Loan Documents and if the insurance is maintained for the benefit of both the lessor and Lender, then Lender will accept such policies provided all of the requirements of Lender, and the Loan Documents are met. In the event the lessee fails to maintain such insurance, Borrower shall promptly obtain such policies as are required by the Loan Documents.

20. Condemnation and Insurance Proceeds. Borrower shall give immediate notice to Lender of any condemnation proceeding (including change of grade), or loss or damage to the Collateral or any right therein. Borrower authorizes Lender, at Lender's option, to make a claim for and to enter into a compromise or settlement with respect to any proceeds payable as a result of condemnation, loss or damage. All proceeds payable as a result of a condemnation, loss or damage shall be paid to Lender. Lender shall, at its option, after deducting its expenses (including court costs and attorney's fees):

- (a) Apply all or part of the proceeds against the sums owed under the Loan Documents, including the Note, whether or not the sums are actually due or the Collateral for the Note is impaired and without affecting the due dates or amount of payments thereafter due under the Note, or
- (b) Release all or any part of the proceeds to Borrower, or
- (c) Permit all or any part of the proceeds to be used for repair and restoration of the Property on such conditions as Lender may impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds during the course of repair and restoration.

21. Reserve Account.

- (a) If Lender so requires, Borrower shall pay to Lender monthly, together with and in addition to any payments of principal and/or interest due under the Note, a sum, as estimated by the Lender, equal to the ground rents, if any, the real estate taxes and assessments next due on the Property and the premiums next due on insurance policies required under the Loan Documents, less all sums already paid therefor, divided by the number of months to elapse before 2 months prior to the date when the ground rents, real estate taxes, assessments and insurance premiums will become delinquent. The monthly reserve account payments and any principal and/or interest payments due shall be paid in a single payment and applied by Lender in the following order: (1) ground rents, real estate taxes, assessments and insurance premiums; (2) expenditures made pursuant to the Loan Documents and interest thereon; (3) late charges or service charges, if any, as provided for in the Note or the other Loan Documents; (4) interest on the Note; and (5) principal due on the Note. Borrower shall promptly deliver to Lender all bills and notices pertaining to the ground rents, taxes, assessments and insurance premiums.
The reserve account is solely for the protection of Lender. Lender shall have no responsibility except to credit properly the sums actually received by it. No interest will be paid on the funds in the reserve account and Lender shall have no obligation to deposit the funds in an interest-bearing account. Upon assignment of this Security Instrument by Lender, any funds in the reserve account shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the grantee all rights of Borrower to any funds in the reserve account.
- (b) If the total of the payments to the reserve account exceeds the amount of payments actually made by Lender, plus such amounts as have been reasonably accumulated in the reserve account toward payments to become due, such excess may be (1) credited by Lender against sums then due and payable under the Loan Documents or (2) refunded to Borrower as appears on the records of Lender. If, however, the reserve account does not have sufficient funds to make the payments when they become due, Borrower shall pay to Lender the amount necessary to make up the deficiency within 15 days after written notice to Borrower. If this Security Instrument is foreclosed or if Lender otherwise acquires the Property, the Lender shall, at the time of commencement of the proceedings or at the time the Property is otherwise acquired, apply the remaining funds in the reserve account, less such sums as will become due during the pendency of the proceedings, against the sums due under the Loan Documents and/or to make payments required under the Loan Documents.
- (c) Unless required by the terms of the Loan Documents other than this Security Instrument, Borrower shall not be required to pay pursuant to the provisions of this Security Instrument monthly reserve account payments so long as there has been no more than four late payments due under the Note throughout the Loan term and there is no other default under the Loan and so long as Borrower remains in ownership of said property, provided receipted bills evidencing the payment of all taxes and/or assessments and insurance premiums are exhibited to Lender within 60 days following the respective due dates of such items. Upon any change in any of these conditions, the Lender may, at its option then or thereafter exercised, enforce this Security Instrument according to its terms.

Borrower's Initials 

22. Leases. Borrower shall fully comply with all of the terms, conditions and provisions of the Leases so that the same shall not become in default and do all that is necessary to preserve all said Leases in force. With respect to any Lease as to all or any part of the Property involving an initial term of three years or more, Borrower shall not, without the prior written consent of Lender, (a) permit assignment or subletting of all or part of the lessee's rights under the Lease unless the right to assign or sublet is expressly reserved by the lessee under the Lease, (b) modify or amend the Lease for a lesser rental or term, and (c) accept surrender of the Lease or terminate the Lease except in accordance with the terms of the Lease providing for termination in the event of a default. Any proceeds or damages resulting from a lessee's default under any such Lease, at Lender's option, shall be paid to Lender and applied against sums owed under the Loan Documents even though such sums may not be due and payable. Except for real estate taxes and assessments, Borrower shall not permit any lien to be created against the Property which may be or may become prior to any Lease. If the Property is partially condemned or suffers a casualty, Borrower shall promptly repair and restore the Property in order to comply with the Leases.

23. Assignment of Rents, Leases and Accounts - Borrower's Right to Collect. Borrower hereby absolutely and irrevocably assigns to Lender all Borrower's interest in the Rents and Leases from the Collateral, together with any Accounts maintained for the holding or deposit of said Rents and Leases or the servicing or administration thereof. This assignment shall be subject to the terms and conditions of any separate assignment of leases and/or rents, whenever executed, in favor of Lender and covering the Property. Unless otherwise provided in any separate assignment of leases and/or rents, so long as Borrower is not in default under the Loan Documents, Borrower may collect the Rents as they become due. Borrower shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under the Loan Documents. No Rents shall be collected more than one month in advance of the due date. Borrower warrants that it has made no prior assignment of the Rents or Leases and will make no subsequent assignment without the prior written consent of Lender. Borrower's right to collect the Rent shall not constitute Lender's consent to the use of case collateral in any bankruptcy proceeding. As used in this Security Instrument, "Rents", "Leases" and "Accounts" shall, depending on the nature of the Collateral, refer to any and all revenues from the goods sold and services rendered of any kind at any hotel, motel or other transient lodging.

24. Lender's Right to Collect Rents. If Borrower is in default under the Loan Documents, without notice to Borrower, Lender or its agents, or a court appointed receiver, may collect the Rents and Leases. In doing so, Lender may (a) evict lessees for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any lessee for past due rent. The Rents and Leases received shall be applied to payment of the costs and expenses of collecting the Rents and Leases, including a reasonable fee to Lender, a receiver or an agent, operating expenses for the Property and any sums due or payments required under the Loan Documents, in such order as anticipated to become due which exceed the anticipated future Rents and Leases. Lender's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Lender of its rights to collect the Rents and Leases. The collection of the Rents and Leases shall not cure or waive any default under the Loan Documents. Lender or a receiver shall have no obligation to perform any of Borrower's obligations under the Leases. In exercising its rights under this section Lender shall be liable only for the proper application of and accounting for the Rents and Leases collected by Lender or its agents. Any Rents and Leases paid to Lender or a receiver shall be credited against the amount due from the lessee under the Lease. In the event any lessee under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Lender; any check in payment or damages for rejection or termination of any such Lease will be made payable both to the Borrower and Lender; and Borrower hereby assigns any such payment to Lender and further covenants and agrees that upon request of Lender, it will duly endorse to the order of Lender any such check, the proceeds of which will be applied to any portion of the indebtedness secured hereunder in such manner as Lender may elect. The Lender, agent or court-appointed receiver may, upon default of the Borrower and without notice to Borrower, take possession of and apply and/or administer the Accounts as identified in Paragraph 23 hereof in the exercise of any of the rights under this Paragraph 24.

25. Additional Security Documents. Borrower shall within 15 days after request by Lender execute and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document Lender may request in order to perfect, preserve, continue, extend, or maintain security interests or liens previously granted and the priority of the security interests or liens. Borrower shall pay all costs and expenses incurred by Lender in connection with the preparation, execution, recording, filing, and refiling of any such document.

26. Financing of Improvements. This Security Instrument is given to secure any obligation incurred by Borrower to Lender for the construction of an improvement of the Property, including the acquisition of the Property or to secure an obligation incurred to refinance an obligation incurred for the construction of an improvement on the Property, including the acquisition of the Property.

27. Late Charge and Other Charges. In the event that the full amount of any payment is not paid by the end of the 15th calendar day after the date it is due, Lender may collect, and Borrower agrees to pay a late charge with such payment. The amount of the charge will be 5% of Borrower's overdue payment of principal and interest. Borrower will pay this amount promptly but only once on each late payment. Lender may, at Lender's option, either require Borrower to pay a charge for NSF/returned item fees related to any check or draft tendered under the Note returned unpaid by the bank upon which the check or draft is drawn, or add the amount of any such charges to the remaining principal balance of the loan. If these charges are added to the loan, then they shall become additional debt to Borrower secured by this Security Instrument and shall bear interest at the Note rate and shall be payable in accordance with the terms of the Note.

28. Default-Remedies. Borrower's failure to comply with any term or condition of the Loan Documents, including payments due on the Note, shall constitute a default. In the event of a default, Lender may declare all amounts owed under the Loan Documents immediately due and payable without demand or notice and/or exercise its rights and remedies under the Loan Documents and applicable law, including foreclosure of this Security Instrument judicially or non-judicially by the Trustee pursuant to the power of sale. If Lender commences a judicial foreclosure, such act shall constitute an acceleration of the terms of the Loan Documents; and Borrower shall thereafter no longer have the right to reinstate the Loan. Lender's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Lender's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. In the event the Loan Documents are referred to an attorney for enforcement of Lender's rights or remedies, whether or not suit is filed or any proceedings are commenced, Borrower shall pay all Lender's costs and expenses (including Trustee's fees, attorneys' fees and attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding), accountants' fees, appraisal and inspection fees and cost of a title report.

29. Cumulative Remedies. All Lender's and Trustee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available in law or equity. In order to obtain performance of Borrower's obligations under the Loan Documents, without waiving its rights in the Collateral, Lender may proceed against Borrower or may proceed against any other security or guaranty for the Note, in such order and manner as Lender may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and the commencement of proceedings to enforce a different remedy.

30. Sale of Property After Default. The Collateral may be sold separately or as a whole, at the option of Lender. In the event of a Trustee's sale of all the Collateral, Lender hereby assigns its security interest in the personal property Collateral to the Trustee. Lender may also realize on the personal property Collateral in accordance with the remedies available under the Uniform Commercial Code or at law. In the event of a foreclosure sale, Borrower and the holders of any subordinate liens or security interests waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation.

31. Appointment of Receiver. In the event of a default, Lender shall be entitled, without bond, and without regard to the adequacy of the Collateral, to the appointment of a receiver for the Collateral. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Lender by the Loan Documents.

32. Foreclosure of Lessee's Rights - Subordination. Lender shall have the right, at its option, to foreclose this Security Instrument subject to the rights of any lessees of the Property. Lender's failure to foreclose against any lessee shall not be asserted as a claim against Lender or as a defense against any claim by Lender in any action or proceeding. Lender at any time may subordinate this Security Instrument to any and all of the Leases, except that Lender shall retain its priority claim to any condemnation or insurance proceeds.

33. Reconveyance After Payment. Upon written request of Lender stating that all obligations secured by this Security Instrument have been paid, Trustee shall reconvey, without warranty, the Property then subject to the lien of this Security Instrument. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." Borrower shall pay any Trustee's fees or recording fees.

34. Release of Parties or Collateral. Without affecting the obligations of any party due under the Loan Documents and without affecting the lien of this Security Instrument and Lender's security interest in the Collateral, Lender and/or Trustee may, without notice (a) release all or any Borrower and/or any other party

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now or hereafter liable for any sums due under the Loan Documents (including guarantors), (b) release all or any part of the Collateral, (c) subordinate the lien of this Security Instrument or Lender's security interest in the Collateral, (d) take and/or release any other security or guarantees for sums due under the Loan Documents, (e) grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, including payment of the Note, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Collateral, (h) make advances pursuant to the Loan Documents, including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) join in the grant of the subordinate lienholder. Borrower shall pay any Trustee's, attorneys', title insurance or recording fees in connection with release of the Collateral, the making of a map or plat or the grant or reservation of an easement or boundary adjustment.

35. Nonwaiver of Terms and Conditions. Time is of the essence with respect to performance of the obligations due under the Loan Documents. Lender's failure to require prompt enforcement of any required obligation shall not constitute a waiver of the obligation due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Borrower and Lender. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

36. Waivers by Borrower. Without affecting any of Borrower's obligations under the Loan Documents, Borrower waives the following:

- (a) Notice of a default by any Borrower or any other party liable for sums due under the Loan Documents.
- (b) Any right to require Lender to proceed against any specific party liable for sums due under the Loan Documents or to proceed or exhaust any specific security for sums due under the Loan Documents.
- (c) Diligence, demand for performance, notice of nonperformance, presentment, protest and notice of dishonor and notice of new or additional indebtedness of any Borrower or any other party liable for sums due under the Loan Documents to Lender.
- (d) Any defense arising out of Lender entering into additional financing or other arrangements with any Borrower or any party liable for sums due under the Loan Documents not relating to the Property and any action taken by Lender in connection with any such financing or other arrangements or any pending financing or other arrangements not related to the Property.
- (e) Any defense arising out of the absence, impairment, or loss of any or all rights of recourse, reimbursement, contribution or subrogation or any other rights or remedies of Lender against any Borrower or any other party liable for sums due under the Loan Documents or any Collateral.
- (f) Any obligation of Lender to see to the proper use and application of any proceeds advanced pursuant to the Loan Documents.

37. Right of Subrogation. Lender is subrogated to the rights, whether legal or equitable, of all beneficiaries, mortgagees, lienholders and owners directly or indirectly paid off or satisfied in whole or in part by any proceeds advanced by Lender under the Loan Documents, regardless of whether these parties assigned or released of record their rights or liens upon payment.

38. Use of Property; Commercial Purpose. The Property is not used principally, or at all, for agricultural or farming purposes. Borrower warrants that Borrower is engaging in this transaction exclusively for business or commercial purposes.

39. Joint and Several Liability. If there is more than one grantor of this Security Instrument (i.e., more than one Borrower), their obligations shall be joint and several.

40. Statement of Amount Owed. Borrower, upon request by Lender, will furnish a written statement duly acknowledged of the amount due under the Loan Documents and whether any offsets or defenses exist against the amount due.

41. Operating and Financial Statements. Lender may require Borrower to deliver within 120 days following the end of each fiscal year during the term of the loan, at Borrower's expense, Borrower's financial statements and operating statements (in a form satisfactory to Lender) covering the Property, including tenant lists and current rent schedule (if any). Lender or its authorized representative shall have access to the books and records of the Borrower and obtain such statements at Borrower's expense if Borrower fails to provide them as herein set forth, or at any time at the Lender's option if Borrower is in default. Lender shall have the option, within 60 days following receipt of the financial and operating statements from Borrower, to order a confirmatory examination of Borrower's books and records pertaining to the Property. Said examination shall be at Lender's expense unless Borrower's statements are found to contain significant discrepancies, in which case the confirmatory audit will be at Borrower's expense. In default thereof Lender shall, in addition to all other remedies, have the option of maturing the indebtedness hereby secured. The Guarantor of Borrower (and each of them, if more than one) shall deliver to Lender within 120 days following the end of each fiscal year during the term of the Loan, at Guarantor's expense, the certified financial statements of Guarantors in a form satisfactory to the Lender.

42. Maximum Interest Rate. If any payment made or to be made under the Loan Documents shall constitute a violation of the usury laws of the State of Utah, then the payment made or to be made shall be reduced so that in no event shall any obligor pay or Lender receive an amount in excess of the maximum amount permitted by the usury laws.

43. Evasion of Prepayment Penalty. If Borrower is in default, any tender of payment sufficient to satisfy all sums due under the Loan Documents made at any time prior to foreclosure sale shall constitute an evasion of the prepayment terms of the Note, if any, and shall be deemed a voluntary prepayment. Any such payment to the extent permitted by law, shall include the additional payment required under the prepayment privilege in the Note or, if at that time there is no prepayment privilege, then such payment to the extent permitted by law will include an additional payment of 5% of the then principal balance.

44. Payment of New Taxes. If any federal, state or local law is passed subsequent to the date of this Security Instrument which requires Lender to pay any tax because of this Security Instrument or the sums due under the Loan Documents, then Borrower shall pay to Lender on demand any such taxes if it is lawful for Borrower to pay them. If it is not lawful for Borrower to pay such taxes, then at its option Lender may declare a default under the Loan Documents.

45. Repairs During Redemption. In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment, shall be added to the amount required to be paid for redemption of the Property.

46. Insolvency Proceedings. Borrower or any party liable on the Note (including guarantors) shall not make any assignment for the benefit of creditors and shall not permit the institution of any proceedings under any federal or state statutes pertaining to bankruptcy, insolvency, arrangement, dissolution, liquidation or receivership, whether or not an order for relief is entered. If Borrower or any party liable on the Note (including guarantors) are nonetheless granted an order for relief under the Bankruptcy Code, then Lender shall be entitled to any and all (a) interest, (b) attorney's fees and costs, (c) advances by Lender for delinquent taxes, assessments, reserves and property and flood insurance which are obligations of Borrower under the Loan Documents and this Security Instrument, and (d) other expenses, regardless of whether said amounts are incurred or accrue prior to or after the filing of a petition for relief under the Bankruptcy Code; and Lender may add said amounts to the principal balance of the Note whenever they are incurred or accrue. As used in this paragraph, "other expenses" means, without limitation, those expenses necessary to adequately preserve or protect the Collateral, and shall include, without limitation, fees and costs of accountants, consultants, expert witnesses, financial advisors, and court reporters, whether or not such expenses are incurred in connection with bankruptcy proceedings, and regardless of whether such amounts are incurred in connection with issues of state law, foreign law, bankruptcy law, other federal law, or otherwise.

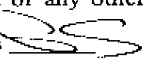
47. Substitution of Trustee. Lender may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers of the original Trustee.

48. First and Last Refusal. As a covenant running with the land, Borrower agrees for himself, successors and assigns, to give Lender the first opportunity on an adequate and reasonable application in writing for the financing of any improvements now or to be constructed on the above Property or any part of them, and agrees not to submit applications or proposals for financing to any lender other than Lender until Lender shall have declined to make such financing available, after a reasonable time for consideration and study of such application for a loan. This Paragraph 48 shall only apply if the Loan secured by this Security Instrument is primarily for the acquisition and/or development of land upon which structures will later be constructed.

49. ARM. If the Note secured hereby contains provisions allowing for changes in the interest rate based on changes in the Index, the "Index" is an external rate, not within Lender's control.

50. Condominium. If the Property or any part thereof is a legal Condominium (but excluding any condominium which, despite its legal status by statute, is or will operate as a rental apartment complex for the benefit of Borrower), the following shall apply:

- (a) By the acceptance of this Security Instrument, the Lender agrees for itself, successors and assigns that it will, upon request of the Borrower, join with the Borrower in requesting the Trustee to partially reconvey subject condominiums providing such releases and release prices plus accrued interest to the date of payment shall be in accordance with the release provisions in the loan agreement or commitment. Such release consideration shall be applied toward the payment of principal, interest or any other sums secured by this Security Instrument.

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- (b) Unless otherwise prohibited by law, Lender or Trustee, either prior to, contemporaneously or subsequent to the foreclosure of this Security Instrument on the Property or while pending the expiration of any applicable redemption period subsequent to a judicial foreclosure and sale upon execution of the Property, may pay any unpaid common expenses payable with respect to the Property for which the Lender may be liable, and subsequent to such payments, the Lender shall have a lien, without merger, upon the Property for the amount paid of the same priority as the lien of the Lender; or if subsequent to sale upon execution, said lien shall be prior to any lien held by any redemptioner as defined by law. In the event the Lender is the successful bidder at any sale upon execution subsequent to a judicial foreclosure and obtains possessory rights to the Property subject to redemption by the judgment debtor or redemption as defined by law, any payments made by the Lender or its successors in interest to satisfy condominium assessments levied and payable during the redemption period (in the event of any redemption) shall be recoverable by the Lender from the judgment debtor or its successors in interest or any redemptioner in the same manner as any other assessment or tax would be recovered pursuant to Utah law.
- (c) Borrower shall promptly pay, when due, all assessments imposed by the Owner's Association or other governing body of the Condominium Project (herein "Owner's Association") pursuant to the provisions of the declaration, by-laws, code of regulations or other constituent document of the Condominium Project.
- (d) So long as the Owner's Association maintains a "master" or "blanket" policy on the Condominium Project which provides insurance coverage against fire, hazards included within the term "extended coverage," and such other hazards as Lender may require, and in such amounts and for such periods as Lender may require, then:
 - (i) Lender waives the provision in this Security Instrument for the monthly payment to Lender of one-twelfth of the premium installments for hazard insurance on the Property;
 - (ii) Borrower's obligation under this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied; and
 - (iii) the provisions in this Security Instrument regarding application of hazard insurance proceeds shall be superseded by any provisions of the declaration, by-laws, code of regulations or other constituent document of the Condominium Project or of applicable law to the extent necessary to avoid a conflict between such provisions and the provision of this Security Instrument. For any period of time during which such hazard insurance coverage is not maintained, the immediately preceding sentence shall be deemed to have no force or effect. Borrower shall give Lender prompt notice of any lapse in such hazard insurance coverage.
In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any such proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the security instrument, with the excess, if any, paid to Borrower.
- (e) Borrower shall not, except after notice to Lender and with Lender's prior written consent, partition or subdivide the Property or consent to:
 - (i) the abandonment or termination of the Condominium Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain;
 - (ii) any material amendment to the declaration, by-laws or code of regulations of the Owner's Association, or equivalent document of the Condominium Project, including, but not limited to, any amendment which would change the percentage interests of the unit owners in the Condominium Project; or
 - (iii) the effectuation of any decision by the Owner's Association to terminate professional management and assume self-management of the Condominium Project.

51. Subordinated Fee. If a fee owner and a leasehold owner of the Property or any portion thereof have executed this Security Instrument, the following shall apply:

- (a) The fee owner and the leasehold owner agree that they have executed this Security Instrument conveying their separate estates in the Property herein conveyed for the purpose of granting to the Lender such a lien as would cause there to be sold, at public auction by Trustee or at foreclosure sale, the fee simple title to the Property described herein free and clear of the leasehold interest now owned by the leasehold owner, to the extinguishment of such leasehold interest and to this end the fee owner and the leasehold owner do jointly and severally waive any right, legal or equitable, which they might now have, or which might subsequently accrue to them, or to anyone holding or claiming under or through them, to have their separate estates sold separately by Trustee or upon foreclosure.
- (b) The fee owner and any Borrower who executes this Security Instrument but not the Note it secures hereby (i) waives presentment, demand, protest and notice of acceptance, demand, protest and nonpayment; (ii) waives any and all lack of diligence or delays in collection or enforcement, the right to plead laches and any and all statutes of limitation as a defense to any demand, or any other indulgence or forbearance whatsoever with respect to any and all obligations secured by this Security Instrument; (iii) waives notice of acceptance hereof by Lender or Trustee under this Security Instrument; (iv) waives notice of any and all advances made under the Note secured by this Security Instrument; (v) agrees that other security for the obligations secured by this Security Instrument may be released or

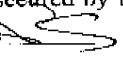
subordinated by Lender, including without limitation all or any part of the Property or Collateral described in this Security Instrument, without affecting the right of Lender hereunder, and hereby waives notice thereof; and (vi) in any action or proceeding to recover any sum secured by this Security Instrument, waives any defense or right that resort must first be had to other security or to any other person.

52. Unsubordinated Fee-Leasehold. If the Property or any part thereof is a leasehold estate, the following shall apply:

- (a) The following described estate, property and rights of Borrower are also included as security for the performance of each covenant and agreement of Borrower contained herein and the payment of all sums of money secured hereby:
 - (i) All right, title and interest of Borrower in and to options to purchase, options of first refusal (or other preemptive rights of purchase) and renewal options with respect to said Ground Lease or said Property or any portion thereof or any interest therein and in and to any greater estate and said Property, including simple estate, as may be subsequently acquired by or released to Borrower.
 - (ii) All interest, estate or other claim, both in law or equity, which Borrower now has or may hereafter acquire in said Property.
- (b) As to the Property that is a leasehold estate, the words "Borrower warrants good and marketable title to an indefeasible fee simple estate" in paragraph 6 hereof shall be deleted and replaced by the following: "Borrower warrants good and marketable title to a leasehold estate created by said Ground Lease."
- (c) Said Ground Lease shall not be modified or changed in any way without the written consent of Lender.
- (d) Lender shall be immediately furnished with all notices of default served by Lessor of said Ground Lease on Borrower.
- (e) Lender is hereby granted the right to participate in all legal proceedings, including arbitration proceedings, affecting or pertaining to said Ground Lease or the demised premises.
- (f) Borrower does hereby assign and set over to Lender all right, title and interest in and to Borrower's interest in said Ground Lease, including without limitation Borrower's option to extend the term of said Ground Lease, if any, and Lender shall have the right to exercise said option to extend said Ground Lease in the event that Borrower fails so to do, and if in the judgment of the Lender the exercise of such option is necessary to protect its interest as Lender.
- (g) In the event Borrower shall fail to make payment due on said Ground Lease or to perform any term or covenant as provided therein, in addition to any such default constituting a default under this Security Instrument, Lender may, at its option, make the defaulted payments or perform the term or covenant and add the same to the amount due under this Security Instrument without waiving any of its rights under this Security Instrument and the Note which it secures.
- (h) If both the lessor's and lessee's estate under Ground Lease shall at any time become vested in one owner, this Security Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger, and in such event, Lender shall continue to have and to enjoy all of the rights, title, interest and privileges of Lender as to the separate estates. In addition, foreclosure of said property shall not destroy or terminate said Ground Lease by application of the doctrine of merger or as a matter of law or as a result of foreclosure unless Lender or any purchaser at foreclosure sale shall so elect. In the event that Borrower shall, at any time prior to the payment in full of all indebtedness secured by this Security Instrument, acquire fee simple title to said Property, such fee simple title shall not merge with the leasehold estate encumbered by this Security Instrument, but such fee simple title shall immediately, without further action on the part of Borrower, become subject to the lien holder. In the event of such acquisition by Borrower, Borrower agrees to execute and deliver to Lender such further instruments, conveyances and assurances as Lender may reasonably require in order to further confirm and assure that the fee simple title so acquired by Borrower is subject to the terms, provisions and lien of this Security Instrument. The provisions of this paragraph shall not apply in the event Lender acquires the fee of said Property, except if Lender shall so elect.

53. Combination Note. If the Note secured hereby is a combination construction loan/permanent loan Note, the following shall apply:

- (a) Borrower acknowledges that the proceeds of the Note are intended to finance the construction of improvements on the Property and further covenants and agrees that:
 - (i) the improvements to be erected on the premises shall be completed in accordance with the provisions of the Loan Agreement by and between Borrower and Lender.
 - (ii) Upon default in any of the terms, provisions or covenants contained in the Loan Agreement, the holder of the Note may (but need not):
 - (1) declare the entire principal and indebtedness and interest thereon due and payable;
 - (2) complete the construction of said improvements and enter into the necessary contracts therefor. All monies so expended shall be so much additional indebtedness secured by this

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Security Instrument, and any monies expended in excess of the Note, shall be payable on demand with interest at the rate applicable in the Note.

The holder of said Note may exercise either or both of the aforesaid remedies.

- (iii) All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured hereby; and said Loan Agreement is fully incorporated in this Security Instrument to the same extent as if fully set forth herein. The occurrence of any event of default under said Loan Agreement is fully incorporated in this Security Instrument to the same extent as if fully set forth herein. The occurrence of any event of default under said Loan Agreement shall constitute a default under this Security Instrument entitling the holder of the Note to all of the rights and remedies conferred upon the said holder by the terms of this Security Instrument [including those set forth in sub-paragraph (b) of this paragraph], or by law, as in the case of any other default. In the event of the conflict between the terms of this Security Instrument, the Note and the terms of the Loan Agreement, those of the Loan Agreement shall govern and prevail over those of the Security Instrument and the Note.
- (iv) The term "Loan Agreement" in this paragraph 53 shall include both the Construction Loan Application/Commitment and the Construction Loan Agreement.
- (b) If Lender has issued both the construction loan and the permanent loan commitments, the following shall apply: After Borrower shall have fully complied with all of the conditions of the permanent loan commitment issued by Lender (the "Permanent Loan Commitment"), or as the same may be modified or amended, and following the date the principal payments have commenced pursuant to the terms of the Note secured hereby, the foregoing provisions of subparagraph 53(a), except subparagraph (a)(iv), shall be terminated and no longer effective. It is contemplated that this Security Instrument and the Note secured hereby (the "Indebtedness") may be sold and transferred by Lender to another lender, hereinafter referred to as the "Permanent Investor." In consideration of Lender entering into the Permanent Loan Commitment, Borrower agrees that after such purchase by the Permanent Investor not to raise or assert against the indebtedness or the Permanent Investor any defenses, offsets or counterclaims which Borrower may have arising out of the Loan Agreement. The Permanent Investor is hereby released as to such defenses, offsets or counterclaims which Borrower may have arising out of the Loan Agreement. The Permanent Investor is hereby released as to such defenses, offsets or counterclaims, and no party to the Loan Agreement shall thereafter look to this Security Instrument or the Note which it secures for any right or remedy under the Loan Agreement nor shall any provision of the Loan Agreement thereafter operate to modify, limit, impair, or prejudice any right or remedy hereunder or under the Note which this Security Instrument secures, which may be had or exercised by the Permanent Investor. The provisions of this subparagraph 53(b) shall be binding upon the Borrower, its successors and assigns, and shall inure to the benefit of the Permanent Investor, its successors and assigns; provided, however, that nothing herein shall be construed as a waiver or release of any right or remedy which Borrower may have against the Lender arising out of the Loan Agreement.
- (c) If it is contemplated that after the whole or partial disbursement of the Loan, this Security Instrument and the Note secured hereby will be purchased by a Permanent Investor, the following shall apply: From and after such purchase the foregoing provisions of subparagraph 53(a), except subparagraph (a)(iv), shall be terminated and no longer effective. In consideration of the Permanent Investor committing and agreeing to purchase this Security Instrument and the Note secured hereby (the "Indebtedness"), Borrower hereby agrees and covenants that after such purchase by the Permanent Investor not to raise or assert against the Indebtedness of the Permanent Investor any defenses, offsets or counterclaims which the Borrower may have arising out of the Loan Agreement. The Permanent Investor is hereby released as to such defenses, offsets and counterclaims and no party to the Loan Agreement shall thereafter look to this Security Instrument or the Note which it secures for any right or remedy under the Loan Agreement nor shall any provision of said Loan Agreement thereafter operate to modify, limit, impair, or prejudice any right or remedy hereunder or under the Note which this Security Instrument secures, which may be had or exercised by the Permanent Investor. The provisions of this subparagraph 53(c) shall be binding upon the Borrower, its successors and assigns, and shall inure to the benefit of the Permanent Investor, its successors and assigns; provided, however, that nothing herein shall be construed as a waiver or release of any right or remedy which Borrower may have against the Lender arising out of the Loan Agreement.
- (d) If this Loan has not been purchased by, paid for and assigned to an Investor as set forth in the Note secured hereby, Lender shall have the right to extend the construction loan, and Borrower hereby irrevocably appoints Lender from time to time its attorney-in-fact to execute and cause to be placed of record if requested by Lender's title insurer such further documents as may be necessary to implement this paragraph. If Lender extends the construction loan, Lender may charge an additional pro rata loan fee covering the extension period which fee may, at the option of the Lender, be added to the principal balance of the indebtedness as an obligation secured by this Security Instrument.

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54. Extension of Construction Loan or Land Loan By Lender. If the Note secured hereby evidences a construction loan or land loan, but is not a combination Note, the following shall apply: Lender shall have the right to extend the construction loan and Borrower hereby irrevocably appoints Lender from time to time its attorney-in-fact to execute and cause to be placed of record if requested by Lender's title insurer such further documents as may be necessary to implement this paragraph. If Lender extends the construction loan or land loan, Lender may charge an additional pro rata loan fee covering the extension period, which fee may, at the option of the Lender, be added to the principal balance of the indebtedness as an obligation secured by this Security Instrument.

55. Partial Release. If Lender's loan commitment provides for a partial release of a portion(s) of the Property, the following shall apply: By the acceptance of this Security Instrument, the Lender agrees for itself, successors and assigns that it will, upon request of the Borrower, if no default exists under this Security Instrument, join with the Borrower in requesting the Trustee to partially reconvey a portion(s) of the Property as specifically described in the Loan Documents, for this loan providing the following conditions are met:

- (a) Full compliance with the partial release provision(s) of the Loan Documents.
- (b) The Borrower shall deliver to the Lender evidence that the partial reconveyance of this Security Instrument will not have any adverse effect upon the priority position of the remaining security as evidenced by the title insurance held by the Lender.
- (c) If applicable, the additional collateral must be platted or short platted in accordance with regulations of the local government authority, the plat must be properly recorded, and Lender must receive evidence of final plat approval from the government authority.

56. Hazardous Waste.

- (a) Borrower represents and warrants to Lender that to the best of Borrower's knowledge after due and diligent inquiry, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Borrower's ownership, possession or control of the Property. Borrower agrees to provide written notice to Lender immediately upon Borrower becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Borrower will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Security Instrument, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.
- (b) Borrower shall promptly comply with all statutes, regulations and ordinances which apply to Borrower or the Property, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction which Borrower is bound by, relating to the use, collection, storage, treatment, control, removal or cleanup of hazardous or toxic substances in, on or under the Property or in, on or under any adjacent property that becomes contaminated with hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Property, at Borrower's expense. Lender may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Lender; and whether or not Borrower has actual knowledge of the existence of hazardous or toxic substances in, on or under the Property through foreclosure or deed in lieu of foreclosure, in connection with such compliance activities. If such reimbursement is not made within 10 days of Lender's demand therefor, Lender may bring a separate action against Borrower for reimbursement of such costs or may add them to the principal balance of the loan at Lender's option.
- (c) Borrower will hold harmless and indemnify, protect and defend Lender from and against any and all claims, demands, damages, costs, expenses, losses, liens, liabilities, penalties, fines and lawsuits and other proceedings (including attorneys' fees), arising directly or indirectly from or out of, or in any way connected with (i) the inaccuracy of the certifications contained herein or in any other document executed by Borrower in connection with the Loan evidenced by the Note, (ii) any activities on the Property during Borrower's ownership, possession or control of the Property which directly or indirectly result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances, (iii) the discovery of hazardous or toxic waste or substances on the Property or other property, or (iv) the cleanup of hazardous or toxic waste or substances from the Property or any other property. Borrower acknowledges that it will be solely responsible for all costs and expenses relating to the clean-up of hazardous or toxic waste or substances from the Property or from any other properties which become contaminated with hazardous or toxic waste or substances as a result of the contamination of or activities on the Property.

Borrower's Initials 

57. Notices. Any notice given by Borrower, Trustee or Lender shall be in writing and shall be effective (1) on personal delivery to the party receiving the notice or (2) on the second day after deposit in the United States mail, postage prepaid with return receipt requested, addressed to the party at the address set forth above, or with respect to the Borrower, to the address at which Lender customarily or last communicated with Borrower.

58. Successors and Assigns. This Security Instrument applies to, inures to the benefit of, and binds all parties hereto and their heirs, successors and assigns. The terms "Borrower," "Trustee" and "Lender" include their heirs, successors and assigns.

59. Appraisals. In the event of a default, Lender may obtain a current appraisal of the Property which is to be paid for by Borrower. Appraisals may be commissioned by Lender when required by laws and regulations which govern Lender's lending practices. The cost of all such appraisals will be borne by Borrower.

60. Deficiency. Borrower consents to a personal deficiency judgment for any part of the debt hereby secured which shall not be paid by the sale of the Collateral, unless such judgment is prohibited by law. Any Borrower who is a married person hereby expressly agrees that recourse may be had against Borrower's other property, however owned, but without hereby creating any lien or charge thereon, for any deficiency due after sale of the Collateral; except that this provision shall not apply in the case of a Borrower who executes this Security Instrument but not the Note secured hereby.

61. Waiver of Rights Regarding Property. To the extent permitted by law, Borrower hereby releases and waives (a) all rights to any homestead exemption in the Collateral; (b) all rights of dower and courtesy in the Collateral; and (c) all rights to possession of the Property during any period allowed by law for redemption.

62. Waiver of Right to Marshal. Borrower, for Borrower and for all persons hereafter claiming through or under Borrower or who may at any time hereafter become holders of liens junior to the lien of this Security Instrument, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Security Instrument or of any other security for any of said indebtedness.

63. Severability. In the event any provision contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Security Instrument, but this Security Instrument shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

64. Signature on Security Instrument Only. Notwithstanding any other provision of this Security Instrument, any person who executes this Security Instrument, but not the Note secured hereby, shall have no personal liability on the Note or for any deficiency judgment which may be obtained upon foreclosure of this Security Instrument. Such persons jointly and severally waive presentment, demand, protest and all notice and agree that Lender, without notice to them or their consent, and upon such terms as Lender may deem advisable, and without affecting in any way Lender's rights hereunder as against the Collateral, may:

- (a) Extend, release, surrender, exchange, compromise, discharge or modify any right or obligation secured by or provided by this Security Instrument or any other instrument securing this loan; or
- (b) Take any other action which Lender may deem reasonably appropriate to protect its security interest in the Collateral.

65. Entire Agreement. The Loan Documents constitute the entire and complete agreement of the parties with respect to the subject matter hereof, and supersede all prior or contemporaneous understandings, arrangements and commitments, all of which whether oral or written, are merged herein.

66. Controlling Document. In the event of a conflict or inconsistency between the terms and conditions of this Security Instrument and the terms and conditions of any other of the Loan Documents (except for any separate assignment of rents and/or leases and any construction loan agreement or land loan agreement which shall prevail over this Security Instrument to the extent of any additional or conflicting terms), the terms and conditions of this Security Instrument shall prevail.

67. Rules of Construction. This Security Instrument shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, limited liability companies, partnerships and limited partnerships.

68. Paragraph Headings. The headings to the various paragraphs and subparagraphs have been inserted for convenience of reference only and shall not be used to construe this Security Instrument.

69. Applicable Law. The Loan Documents shall be governed by and construed in accordance with the laws of the State of Utah.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

PATRICIA ANN SIMPSON

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO

I certify that I know or have satisfactory evidence that PATRICIA ANN SIMPSON

[Name(s) of person(s)]

is are the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument and acknowledged it to be (his/hers/their) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 2/13/04

Ildefonso M. Castillo

(Signature)



Notary Public in and for the State of CALIFORNIA
residing at 1032 IRUING ST. S.F. CA 94122
My commission expires JULY 5, 2005

STATE OF)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____

[Name(s) of person(s)]

is/are the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument, on oath stated that (he/she/they) was/were authorized to execute the instrument and acknowledged it as the _____

(Type of Authority, e.g., Officer, Trustee)

of _____
(Name of the Party on Behalf of Whom the Instrument was Executed)

to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or Stamp)

(Signature)

Notary Public in and for the State of _____,
residing at _____
My commission expires _____

**"SCHEDULE A"
ADDENDUM TO DEED OF TRUST**

Date: February 11th, 2003

Loan Number: 096 205 284468-6

Addendum attached to and forming part of the Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents and Accounts ("Security Instrument") of even date by and between PATRICIA ANN SIMPSON AN UNMARRIED INDIVIDUAL

as Borrower and WASHINGTON FEDERAL SAVINGS, as Lender.

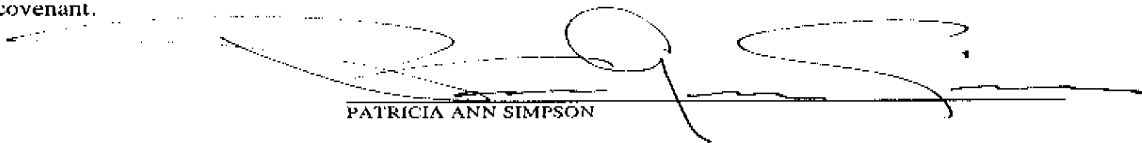
Covenant Number 70 is added to the Security Instrument as follows:

70. SECONDARY FINANCING

There are two alternative covenants stated below which refer to whether or not, and if so, in what manner, secondary financing subordinate to the lien created by the Security Instrument will be permitted. Only one of these two alternatives shall be a part of this Addendum and the Security Instrument. Lender has determined which alternative is a covenant of the Borrower by checking below the appropriate box immediately preceding the paragraph Lender has determined to be applicable to Borrower, and Borrower has agreed to this chosen alternative by signing this Addendum to the Security Instrument and pursuant to the terms of Lender's loan commitment.

No secondary financing, whether or not subordinate to the lien of this Security Instrument, shall be made so as to further encumber the Property unless Lender, in its sole discretion, hereafter approves of such secondary financing in advance of its imposition; and if Borrower shall breach the terms of this covenant, Lender may, at its option, declare a default and acceleration of the loan consistent with the terms of Covenant Number 28 of the Security Instrument and thereafter, upon failure to cure the breach, exercise any and all remedies conferred upon Lender by law and by the terms of the Security Instrument. In the event of such a breach by Borrower, Lender need not be required to show an impairment of its security in order to avail itself of the remedies conferred by this covenant

Secondary financing which may further encumber the Property shall be limited to secondary financing subordinate to the lien created by this Security Instrument and which, in the aggregate, does not exceed \$ _____; and if Borrower shall breach the terms of this covenant, Lender may, at its option, declare a default and acceleration of the loan consistent with the terms of Covenant Number 28 of the Security Instrument and thereafter, upon failure to cure the breach, exercise any and all remedies conferred upon Lender by law and by the terms of the Security Instrument. In the event of such a breach by Borrower, Lender need not be required to show an impairment of its security in order to avail itself of the remedies conferred by this covenant.



PATRICIA ANN SIMPSON

